

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

I-2-0162.1US

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on _____

Signature _____

Typed or printed name _____

Application Number

09/845,803

Filed

April 30, 2001

First Named Inventor

Zeira et al.

Art Unit

2472

Examiner

Raj K. Jain

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

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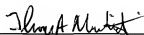
☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 56,773

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Thomas A. Mattioli

Typed or printed name

215-568-6400

Telephone number

April 8, 2011

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the **PATENT APPLICATION** of:

Zeira et al.

Application No.: 09/845,803

Confirmation No.: 3229

Filed: April 30, 2001

For: DOWNLINK POWER CONTROL FOR
MULTIPLE DOWNLINK TIME SLOTS IN
TDD COMMUNICATION SYSTEMS

Group: 2472

Examiner: Raj K. Jain

Our File: I-2-0162.1US

Date: April 8, 2011

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Communication is being timely filed in response to the Final Office Action dated January 10, 2011.

A Pre-Appeal Brief Review is hereby requested in the above application for the following reasons:

In the Office Action, claims 31-36 and 40 were finally rejected under 35 U.S.C. §103(a) as being unpatentable over U. S. Patent Publication No. 2002/0016177 (Miya et al.) in view of U. S. Reference No. 6,035,210 (Endo et al.).

Figures 2 and 5 of Miya as cited by the Examiner, and their corresponding description, refer to setting the transmission power level for a particular mobile station in a **TDD Cycle** designated $i-1$, i , $i+1$. Miya illustrates an **individual** setting of power level for each of the TDD cycles using transmit power commands (TPC) for that TDD cycle. However, there is no disclosure, teaching or suggestion of what exactly a "TDD cycle" refers to in the Miya reference, or that $i-1$, i , and $i+1$ are, as claimed, timeslots of a same CCTrCH channel transmission. In fact, in a reasonable interpretation, $i-1$, i , $i+1$ appear to be referring to different communication frames where i is the subsequent transmitted frame after $i-1$, and $i+1$ is the subsequent frame transmitted after i . Accordingly, the TPC commands $Ui-1$, $Di-1$ would correspond to TDD cycle $i-1$, Ui , Di to TDD cycle i , and $Ui+1$, $Di+1$ to TDD cycle $i+1$.

Accordingly, it is not disclosed, taught or suggested in Miya that a single TPC command is sent for an entire CCTrCH that includes a plurality of timeslots. Any TPC command disclosed in Miya is exclusively for, at best (assuming transmission interval in a TDD cycle is a timeslot), an individual timeslot of a TDD cycle (e.g., $i-1$,

i , or $i+1$), with no disclosure, teaching or suggestion that the TPC would be the same for any other timeslot transmitted over the CCTrCH.

The present claims disclose sending a single power command for a CCTrCH which includes a plurality of time slots. Nowhere in the Miya reference is it disclosed, suggested, or taught to send a single power command for a CCTrCH which includes a plurality of time slots. As discussed above, at best Miya teaches sending individual TPCs for an individual transmission interval in a TDD cycle. Additionally, the present claims use a power command for the CCTrCH and an interference measurement for each timeslot. Nowhere in Miya is this arrangement disclosed, suggested, or taught.

Endo is relied upon by the Examiner as disclosing the transmission of interference measurements. However, since Miya at best uses individual timeslot TPCs, it is completely **non-obvious** why a person of ordinary skill in the art would use an interference measurement in addition to the TPC. In fact, a person of ordinary skill in the art would not consider combining the Endo reference with the Miya reference. Additionally, the Endo reference fails to cure the previously stated deficiencies of the Miya reference.

Neither the Miya nor Endo references, whether taken alone or in combination with one another disclose, teach or suggest what is claimed in the Applicants' present claims. An obviousness rejection cannot be sustained where the prior art

does not suggest the claimed configuration. See *Ex Parte Katoh et al*, Appeal 20071460, Decided May 29, 2007 (BPAI 2007). Furthermore, rejections on obviousness grounds must be supported with articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co v. Teleflex Inc.*, 550 U.S. 398, ___, 82 U.S.P.Q. 2d 1385, 1396 (U.S. 2007).

Furthermore, the Examiner cannot string together multiple references that include bits and pieces of what is in the Applicants' claims, and then engage in impermissible hindsight from the Applicants' disclosure in order to interpret the bits and pieces as rendering the Applicants' claims obvious. It is well established law that hindsight may not be utilized by the Examiner when rejecting claims under Examination. "We find no suggestion to combine the teachings and suggestions . . . as advanced by the Examiner, except from using Appellants' invention as a template through a hindsight reconstruction of Appellants' claims." *Ex Parte Crawford et al*, Appeal 20062429, Decided May 30, 2007 (BPAI 2007).

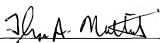
Accordingly, applicants respectfully submit that the claims are allowable over the Miya and Endo references, whether taken alone, or in combination with one another.

Applicant: Zeira et al.
Application No.: 09/845,803

In view of the foregoing remarks, Applicants respectfully request a Pre-Appeal Brief Review and a notice to that effect is respectfully requested.

Respectfully submitted,

Zeira et al.

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